

JUN 9 1993

93 151648

RECORDED AT REQUEST

COVENANT OF DEED RESTRICTION

JUN 9 1993

Recording Requested By:

AT 11 O'CLOCK A.M.
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER

FEE \$

6400.00

Pinole Point Properties, Inc.

When Recorded, Mail To:

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Site Mitigation Branch

COVENANT
TO RESTRICT USE OF PROPERTY

Pinole Point Properties, Inc.
Richmond, California

This Covenant and Agreement ("Covenant") is made on the
8 day of June, 1993 by Pinole Point Properties,
Inc. ("Covenantor"), which is the owner of record of certain
property situated in Richmond, County of Contra Costa, State
of California, more particularly described in Exhibit "A"
attached hereto and incorporated herein by reference (the
"Property"), and by the Department of Toxic Substances Control
(the "Department"). Covenantor and the Department desire and
intend that in order to protect the present and future public
health and safety, the Property shall be used in such a manner
as to avoid potential harm to persons or property which may
result from hazardous substances which have been deposited on
the Property.

1 The Covenantor and the Department intend for this
2 Covenant to supersede that Covenant and Agreement to Restrict
3 the Use of Property dated January 24, 1989, by and between
4 Pinole Point Properties, Inc. and the California Department of
5 Health Services (predecessor to the Department of Toxic
6 Substances Control) which agreement was recorded on February
7 10, 1989, as Document 89-25557 in the Official Records of
8 Contra Costa County, California. All parcels of property that
9 are referred to in the Document 89-25557, including the
10 property which is subject to this Covenant, as described in
11 Exhibit A of this Covenant, are released from any restrictions
12 imposed by Document 89-25557.

13
14 ARTICLE I

15 STATEMENT OF FACTS
16

17 1.01 Description of Contamination. The property had a
18 pond which was used for hazardous waste disposal. The
19 hazardous waste was primarily zinc and lead. The entire
20 property has been covered with a clay soil cap to contain the
21 hazardous waste and prevent the waste from migrating.
22

23 1.02 Health Effects. The corrective actions taken at the
24 Property have essentially eliminated the potential for off-
25 site migration of zinc and lead. The clay soil cap prevents
26 surface water from infiltrating into soils containing the
27 contaminants.

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1 Potential exposure via direct exposure to contaminated
2 surface soils has been eliminated by capping the contaminated
3 areas. In the event that exposure was not minimized or
4 eliminated, potential health effects are as follows:

5
6 Lead. Acute exposure to lead may produce fatigue,
7 headache, aching muscles and bone, gastrointestinal
8 disturbances, sleep disturbance, abdominal pain and
9 decreased appetite. Chronic exposure can lead to
10 irreversible vascular sclerosis, irreversible brain
11 damage, tubular cell atrophy, interstitial fibrosis, and
12 glomerular sclerosis.

13
14 Zinc. Zinc is a skin irritant. Exposure to zinc may
15 cause dyspnea and sweating, throat dryness, coughing,
16 fatigue, generalized aches, chills, fever, nausea, and
17 vomiting.

18
19 1.03 Surrounding Land Use. The Property is located in an
20 area used for industrial, commercial and residential purposes.
21 The area within a one-mile radius of the Property is partly
22 industrial, commercial and residential. The property is
23 bordered by properties for industrial use. The nearest homes
24 to the Property are less than one-half mile to the south.
25 There are three schools found within one-mile radius of the
26 Property.

27

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ARTICLE II

GENERAL PROVISIONS

1
2
3
4 2.01 Provisions to Run with the Land. This Covenant sets
5 forth protective provisions, covenants, restrictions, and
6 conditions (collectively referred to as "Restrictions"), upon
7 and subject to which the Property and every portion thereof
8 shall be improved, held, used, occupied, leased, sold,
9 hypothecated, encumbered, and/or conveyed. Each and all of
10 the Restrictions are imposed pursuant to Health and Safety
11 Code Section 25355.5, shall run with the land pursuant to
12 Health and Safety Code Section 25355.5, pass with each and
13 every portion of the Property, and shall apply to, inure to
14 the benefit of, and bind the respective successors in interest
15 thereof unless terminated pursuant to Article V. Each and all
16 of the Restrictions are imposed upon the entire Property
17 unless expressly stated as applicable to a specific portion of
18 the Property. Each and all of the Restrictions are for the
19 benefit of and enforceable by the Department.
20

21 2.02 Concurrence of Owners Presumed. All purchasers,
22 lessees, or possessors of any portion of the Property shall be
23 deemed by their purchase, lease, or possession of such
24 Property, to be in accord with the foregoing and to agree for
25 and among themselves, their heirs, successors, and assignees,
26 and the agents, employees, and lessees of such owners, heirs,
27 successors, and assignees, that the Restrictions as herein

1 established must be adhered to for the benefit of future
2 Owners and Occupants and that their interest in the Property
3 shall be subject to the Restrictions contained herein.
4

5 2.03 Incorporation into Deeds and Leases. Covenantor
6 desires and covenants that the Restrictions set out herein
7 shall be incorporated by reference in each and all deeds and
8 leases of any portion of the Property.
9

10 ARTICLE III

11 DEFINITIONS
12

13 3.01 Department. "Department" shall mean the California
14 State Department of Toxic Substances Control and shall include
15 its successor agencies, if any.
16

17 3.02 Improvements. "Improvements" shall mean all
18 buildings, roads, driveways, regrading, and paved parking
19 areas, constructed or placed upon any portion of the Property.
20

21 3.03 Occupant(s). "Occupant(s)" shall mean those persons
22 entitled by ownership, leasehold, or other legal relationship
23 to the exclusive right to occupy any portion of the Property.
24

25 3.04 Owner(s). "Owner(s)" shall mean the Covenantor or
26 successors in interest, including heirs and assigns, who hold
27 title to all or any portion of the Property.

1 3.05 Director. "Director" shall mean the Director of the
2 California Department of Toxic Substances control or his or
3 her designee.

ARTICLE IV

8 4.01 Restrictions on Development and Use. Covenantor
9 promises to restrict the use of the Property as follow:

11 a. Property shall be restricted to commercial or
12 industrial uses.

14 b. Residential development for human habitation shall
15 not be permitted on the Property.

17 c. Hospitals or health clinics shall not be permitted
18 on the Property.

d. Day-care centers for either children or senior citizens shall not be permitted on the Property.

23 e. Schools for children under 18 years of age shall not
24 be permitted on the Property.

26 f. No drilling for drinking water shall be permitted on
27 the Property.

1 g. No raising of food (cattle, food crops, cotton and
2 etc.) shall be permitted on the Property.

3
4 h. Subdivision of the Property is forbidden, except as
5 allowed under Health and Safety Code Section 25232 (a)
6 (2) and (b) (2).

7
8 i. No activities which will disturb the capped soils or
9 groundwater as set forth in the closure permit dated
10 October 10, 1986 shall be permitted on the Property
11 without a Soil Management Plan and a Health & Safety Plan
12 submitted to the Department for review and approval.

13
14 j. The capped area shall be posted with a bilingual
15 sign in English and Spanish stating that no grading,
16 excavation or construction activities can occur on the
17 capped area of Property without written permission of the
18 Department.

19
20 k. Any contaminated soils brought to the surface by
21 grading, excavation, trenching or backfilling pursuant to
22 a Department-approved Soil Management Plan and Health and
23 Safety Plan shall be managed in accordance with all
24 applicable provisions of state and federal law.

25
26 l. All uses and development of the Property shall
27 preserve the integrity of the cap, liner, surface and

ground water extraction system, if any, and shall not disturb the integrity of any hazardous substance containment.

m. Any proposed alteration of the cap shall require written approval by the Department.

n. The Owner(s) shall monitor the Cap annually for signs of deterioration and to ensure integrity of the cap.

o. The Owner(s)/Occupant(s) shall notify the Department of each of the following: 1) the type, cause, location and date of any disturbance to the cap which would affect the ability of the cap to contain subsurface hazardous substances on the Property and 2) the type and date of repair of such disturbance. Notification to the Department shall be made by registered mail within ten (10) working days of both the discovery of cap disturbance and completion of repairs.

p. If monitoring detects contamination at levels requiring corrective action(s) by the Department, the Owner(s)/Occupant(s) shall develop and submit a plan of correction for Department approval.

1 q. The Owner(s)/Occupant(s) shall grant the Department
2 and other government agencies access to the Property,
3 upon reasonable notice and at reasonable times, for
4 inspection, surveillance, monitoring, maintenance, and
5 other purposes as deemed necessary by the Department in
6 order to protect the public health and safety.

7
8 r. The Owner(s)/Occupant(s) shall provide notification
9 to any subsequent purchasers, lessees and tenants
10 stating that there is residual contamination as specified
11 in Health & Safety Code Section 25359.7(a).
12

13 4.02 Conveyance of Property. The Owner(s) shall provide
14 thirty (30) days notice to the Department of any sale, lease,
15 or other conveyance of the Property or an interest in the
16 Property to a third person. The Department shall not, by
17 reason of the Covenant, have authority to approve, disapprove,
18 or otherwise affect any sale, lease, or other conveyance of
19 the Property except as otherwise provided by law, by
20 administrative order, or by reason of this Covenant.
21

22 4.03 Enforcement. Failure of any Owner/Occupant to
23 comply with any of the Restrictions set forth in Section 4.01,
24 shall be grounds for the Department, by reason of the
25 Covenant, to require that the Owner/Occupant modify or remove
26 any Improvements constructed in violation of that Section
27 4.01. Violation of the Covenant shall be grounds for the

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1 Department to file civil and criminal actions against the
2 Owner/Occupant as provided by law.

3
4 4.04 Notice in Agreements. In the event of any
5 conveyance, all Owner(s)/Occupant(s) shall execute written
6 lease, sublease, or rental agreements relating to the
7 Property. Any such instrument shall contain the following
8 statement:

9
10 "The land described herein contains hazardous substances.
11 Such condition renders the land and the owner, lessee, or
12 other possessor of the land subject to requirements,
13 restrictions, provisions, and liabilities contained in
14 Chapter 6.5 and Chapter 6.8 of Division 20 of the Health
15 and Safety Code as made applicable to this Property by a
16 specific Covenant of Deed Restriction, a copy of which is
17 attached hereto and incorporated herein by reference.
18 This statement is not a declaration that a hazard
19 exists."
20

21 ARTICLE V

22 VARIANCE AND TERMINATION

23
24 5.01 Variance. Any Owner(s) or, with the Owner's(s')
25 written consent, any Occupant of the Property or any portion
26 thereof may apply to the Department for a written variance
27

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1 from the provisions of this Covenant. Such application shall
2 be made in accordance with Health & Safety Code Section 25233.

3

4 5.02 Termination. Any Owner(s) or, with the Owner's(s')
5 written consent, any Occupant of the Property or a portion
6 thereof may apply to the Department for a termination of the
7 Restrictions as they apply to all or any portion of the
8 Property. Such application shall be made in accordance with
9 Health & Safety Code Section 25234.

10

11 5.03 Term. Unless terminated in accordance with Section
12 5.02 above, by law or otherwise, this Covenant shall continue
13 in effect in perpetuity.

14

15

ARTICLE VI

16

MISCELLANEOUS

17

18 6.01 No Dedication Intended. Nothing set forth herein
19 shall be construed to be a gift or dedication, or offer of a
20 gift or dedication, of the Property or any portion thereof to
21 the general public or for any purposes whatsoever.

22

23 6.02 Notices. Whenever any person gives or serves any
24 notice, demand, or other communication with respect to this
25 Covenant, each such notice, demand, or other communication
26 shall be in writing and shall be deemed effective 1) when
27 delivered, if personally delivered to the person being served

1 or to an officer of a corporate party being served or official
2 of a government agency being served, or 2) three (3) business
3 days after deposit in the mail if mailed by United States
4 mail, postage paid, certified return receipt requested:

5
6 To: Pinole Point Properties
7 P. O. Box 4006
8 Richmond, CA 94804

9 To: Department of Toxic Substances Control
10 Region 2
11 700 Heinz Avenue, Suite 200
12 Berkeley, CA 94710
13 Attention: Barbara J. Cook, P.E., Chief
14 Site Mitigation Branch

15 6.03 Partial Invalidity. If any portion of the
16 Restrictions or terms set forth herein is determined to be
17 invalid for any reason, the remaining portion shall remain in
18 full force and effect as if such portion had not been included
19 herein.

20 6.04 Article Headings. Headings at the beginning of each
21 numbered article of this Covenant are solely for the
22 convenience of the parties and are not a part of the Covenant.

23 6.05 Recordation. This instrument shall be executed by
24 the Covenantor and by the Site Mitigation Branch Chief,
25 California Department of Toxic Substances Control. This
26 instrument shall be recorded by the Covenantor in the County
27 of Contra Costa within five (5) days of the latest date of
execution.

1 6.06 References. All references to Code sections include
2 successor provisions.

3
4 IN WITNESS WHEREOF, the parties execute this Covenant as of
5 the date set forth above.

6
7 COVENANTOR: Pinnacle Point Properties

8 By: H.E. WELM

9 Title: VICE PRESIDENT

10 Date: 6/8/93

11
12 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

13 By: Barbara J Cook

14 Barbara J. Cook, Chief

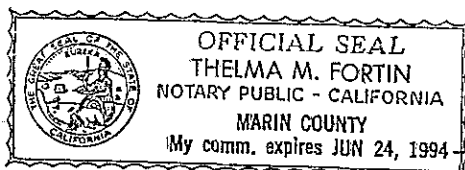
15 Title: Site Mitigation Branch, Region 2

16 Date: 6/8/93

1 STATE OF CALIFORNIA)
2 COUNTY OF ALAMEDA)
3

4 On June 5, 1993, 1993, before me, a Notary Public in
5 and for the State of California, personally appeared
6 Hermann Wzlem, personally known to me or proved
7 to me on the basis of satisfactory evidence to be the person
8 whose name is subscribed to the within instrument and
9 acknowledged to me that he/she executed the same in his/her
10 authorized capacity, and that by his/her signature on the
11 instrument the person, or the entity upon behalf of which the
12 person acted, executed the instrument.

13
14
15 WITNESS my hand and official seal.



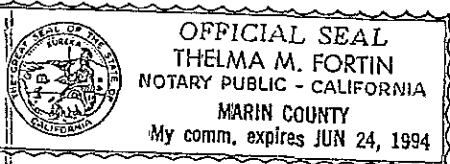
Thelma M. Fortin

20 Notary's Signature
21
22
23
24
25
26
27

1 STATE OF CALIFORNIA)
 2 COUNTY OF ALAMEDA)
 3

4 On June 8, 1993, 1993, before me, a Notary Public in
 5 and for the State of California, personally appeared Barbara
 6 J. Cook, personally known to me or proved to me on the basis
 7 of satisfactory evidence to be the person whose name is
 8 subscribed to the within instrument and acknowledged to me
 9 that she executed the same in her authorized capacity, and
 10 that by her signature on the instrument the person, or the
 11 entity upon behalf of which the person acted, executed the
 12 instrument.
 13

14
 15 WITNESS my hand and official seal.
 16



Thelma M. Fortin

20 Notary's Signature
 21
 22
 23
 24
 25
 26
 27

EXHIBIT A
Legal Descriptions

APRIL 8, 1993
JOB NO. 29533-01
PARCEL.1

PARCEL 1

ALL THAT PORTION OF PARCEL 4 AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON PARCEL MAP MS 759-88 FILED IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY IN BOOK 138 OF PARCEL MAPS AT PAGE 26, DESCRIBED AS FOLLOWS:

COMMENCING AT AN ANGLE POINT IN THE NORTHERN LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY RIGHT-OF-WAY, SAID POINT BEING DESIGNATED AS POINT "A" IN THE DESCRIPTION OF PARCEL 2 OF THAT CERTAIN DEED FROM PINOLE POINT STEEL COMPANY TO PINOLE POINT PROPERTIES, INC., RECORDED DECEMBER 17, 1979, IN SAID OFFICE OF THE COUNTY RECORDER IN BOOK 9662 OF OFFICIAL RECORDS AT PAGE 199 AND RUNNING THENCE WESTERLY ALONG SAID NORTHERN LINE SOUTH 77°08'16" WEST 170.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE, FROM SAID POINT OF BEGINNING, LEAVING SAID NORTHERN LINE NORTH 01°16'44" WEST 324.07 FEET; THENCE, NORTH 11°24'12" EAST 367.38 FEET TO A POINT ON THE SOUTHERN LINE OF THE SOUTHERN PACIFIC COMPANY RIGHT-OF-WAY; THENCE, LEAVING SAID SOUTHERN LINE, NORTH 77°46'02" WEST 786.50 FEET; THENCE, SOUTH 15°52'38" WEST 204.62 FEET; THENCE, SOUTH 74°07'22" EAST 214.29 FEET; THENCE, SOUTH 20°17'20" EAST 709.46 FEET TO THE HEREINABOVE NAMED NORTHERN LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY RIGHT-OF-WAY; THENCE, EASTERLY ALONG SAID NORTHERN LINE NORTH 77°08'16" EAST 315.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 413,979 SQUARE FEET OF LAND, MORE OR LESS.

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BEARINGS IN THIS DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE III. DISTANCES IN THIS DESCRIPTION ARE GRID DISTANCES; TO CONVERT TO GROUND DISTANCE MULTIPLY DISTANCE GIVEN BY 1.0000662



END OF DESCRIPTION

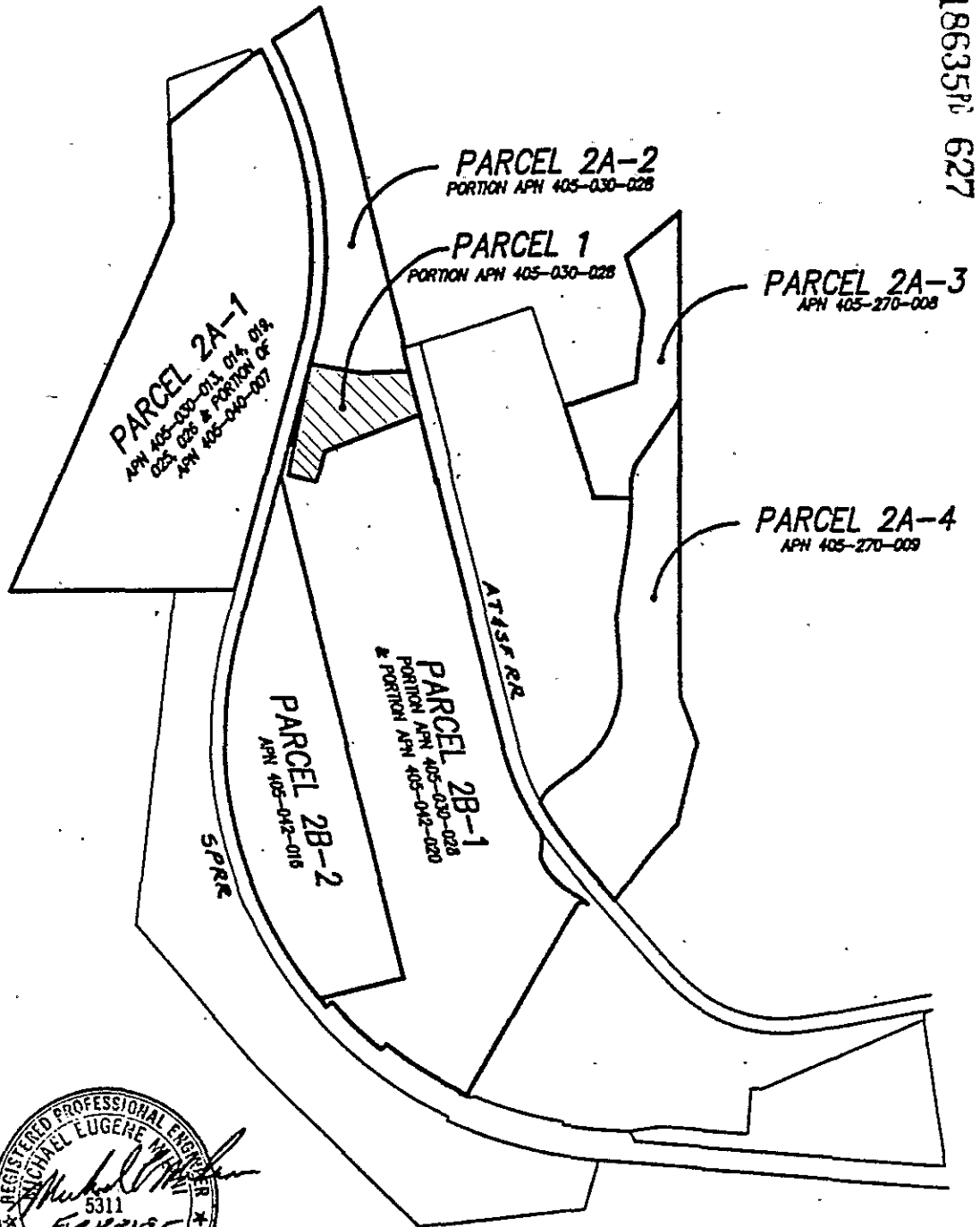
PREPARED BY: Michael E. Milani
MICHAEL E. MILANI
L.S. 5311

PORTION OF APN 405-030-028

637 186357 626

BOOK 18635P 627

SCALE: 1" = 1000'



**EXHIBIT TO ACCOMPANY
COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY**

**LANDS OF PINOLE POINT PROPERTIES, INC.
CITY OF RICHMOND - CONTRA COSTA COUNTY - CALIFORNIA**

APRIL 8, 1993

SCALE: 1" = 1000'

Prepared By
Luk, Milani & Associates, Inc.
Civil Engineers - Land Planners - Land Surveyors
1646 N. California Blvd. - Suite 288
Walnut Creek, California 94596

END OF DOCUMENT